

§ 70.304

by the Bureau (except where this authority is expressly given by 26 U.S.C. to any other person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to taxes within the Administrator's jurisdiction.

(b) *Retroactivity.* The Administrator, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the laws within the Administrator's jurisdiction shall be applied without retroactive effect. The Administrator may prescribe the extent, if any, to which any ruling relating to the laws within the Administrator's jurisdiction, issued by or pursuant to authorization from the Administrator, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Administrator, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of taxes within the Administrator's jurisdiction.

(26 U.S.C. 7805)

§ 70.304 Place for filing documents other than returns.

(a) If a document, other than a return, is required to be filed with a TTB office, such document may be hand delivered to such office.

(b) For purposes of this section, a return or document will be considered to be hand carried if it is brought to a TTB supervisor of the TTB office by the person required to file the return or other document, or by the person's agent. Examples of persons who will be considered to be agents, for purposes of the preceding sentence, are: Members of the taxpayer's family, an employee of the taxpayer, the taxpayer's attorney, accountant, or tax advisor, and messengers employed by the taxpayer. A return or document will not be con-

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sidered to be hand carried if it is sent to the Bureau through the U.S. Mail.

(26 U.S.C. 6091)

[T.D. ATF-305, 55 FR 47650, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29028, May 29, 2001]

§ 70.305 Timely mailing treated as timely filing.

(a) *General rule.* Title 26 U.S.C. 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Title 26 U.S.C. 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.* The term *document*, as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau.

(c) *Mailing requirements.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service, as defined by the postal regulations (39 CFR Part 2). Title 26 U.S.C. 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of 26 U.S.C. 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see paragraph (c)(2) of this section, with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Postal Service is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed

and so postmarked would ordinarily be received, if the person who is required to file the document establishes that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document, that the delay in receiving the document was due to a delay in the transmission of the mail, and the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service shall be disregarded, and whether the envelope was mailed in accordance with this section shall be determined solely by applying the rules of paragraph (c)(1)(iii)(A) of this section.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. Except as provided in 26 U.S.C. 5061 for the filing of returns and payment of a tax under 26 U.S.C. subtitle E, when the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday, shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is delivered by U.S. mail to the agency,

officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a post-marked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer or office.

(2) Title 26 U.S.C. 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document.

(e) *Exceptions.* This section shall not apply with respect to:

(1) The filing of a document in, or the making of a payment to, any court,

(2) Currency or other medium of payment unless actually received and accounted for, or

(3) Returns, claims, statements, or other documents, or payments, which are required under any provision of 26 U.S.C. enforced and administered by the Bureau or the regulations thereunder to be delivered by any method other than by mailing.

(26 U.S.C. 5061 and 7503)

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.* Title 26 U.S.C. 7503 provides that when the last day prescribed under provisions of 26 U.S.C. enforced and administered by the Bureau, for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in the determining of the last day for performance of any act. Title 26 U.S.C. 7503 is not applicable to the filing of returns and payment of tax under 26 U.S.C. subtitle E. Title 26 U.S.C. 7503 is applicable only in case an act is required under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau to be performed on or before a prescribed

date or within a prescribed period. Title 26 U.S.C. 7503 applies to acts to be performed by the taxpayer (such as the filing of a claim for credit or refund of tax) and acts to be performed by the appropriate TTB officer, (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax). For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco, and certain other excise taxes, see 26 U.S.C. §§ 5061 and 6302 and the regulations covering the specific commodity.

(b) *Legal holidays.* (1) For the purpose of 26 U.S.C. 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays found in 5 U.S.C. 6103(a), as enacted and made effective by the Act of November 2, 1983 (97 Stat. 917), are:

- (i) January 1, New Year's Day,
- (ii) Third Monday in January, Birthday of Martin Luther King, Jr.,
- (iii) January 20, when such day is Inauguration Day,
- (iv) Third Monday in February, Washington's Birthday,
- (v) Last Monday in May, Memorial Day,
- (vi) July 4, Independence Day,
- (vii) First Monday in September, Labor Day,
- (viii) Second Monday in October, Columbus Day,
- (ix) November 11, Veterans' Day,
- (x) Fourth Thursday in November, Thanksgiving Day, and
- (xi) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia. For the purpose of 26 U.S.C. 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday.

(2) In the case of any statement or other document required to be filed, or any other act required under the authority of provisions of 26 U.S.C. enforced and administered by the Bureau to be performed at any office of the Bureau or any other office or agency of the United States, located outside the